# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 23574 of 2005

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE K.M.MEHTA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**BHIMBAHADUR @ RAJU KISHANBAHADUR THAPA (GURKHA) - Petitioner(s)**

**Versus**

**COMMISSIONER OF POLICE & 2 - Respondent(s)**

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**Appearance :**

MR HEMEN H JOSHI for Petitioner(s) : 1,

MR LR POOJARI, AGP for Respondents

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**CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA**

**Date : 20/12/2005**

**ORAL JUDGMENT**

1. Bhimbahadur @ Raju Kishanbahadur Thapa (Gurkha), petitioner, has filed this habeas corpus petition under Article 226 of the Constitution of India for quashing

and setting aside the order of detention dated 25th August, 2005, passed by the Police Commissioner, Vadodara City. The petition was filed on 5th December, 2005. Thereafter the matter was placed for hearing before this Court on 7th December, 2005, and this Court has issued Rule returnable on 19th December, 2005.

2. On behalf of respondents Mr.L.R.Poojari, learned AGP appears. Hence, with the consent of the parties, the matter has been taken up for final hearing today.

3. Mr.Hemen Joshi, learned advocate for the petitioner has invited my attention to the order of detention dated 25.8.2005 and also committal order dated 25.8.2005 wherein he has been detained in Rajkot Jail. He has also invited my attention to the grounds supplied by the authority by their communication dated 25.8.2005. He has stated that from the grounds it reveals that the petitioner had committed offence at J.P.Road Police Station being Criminal Case No.255/05. He has committed the offence on 16.7.2005 for the offence punishable under Secs.457, 380, 447 & 114 of IPC., where it was contended that he has committed theft of some gold and silver ornaments, mobile phones,

wrist watch, motor-cycle valued at Rs.44,200/-. The another offence was registered at J.P.Road Police Station being Criminal Case No.256/05. The offence was committed on 18.7.2005 under Sections 399, 400, 402 of IPC read with Sec.25(1)(A)(b), Sec.27 of the Arms Act. He has committed theft of mobile phones, steel pipe, knife, Indian made revolver, Hyundai Car and cash of Rs.630/- The another offence is registered at Sayajiganj Police Station being Criminal Case No.182/05 for the offence punishable under Secs.457, 380 and 114 of IPC. The offence was committed on 4.7.2005 where it was contended that he had committed theft of one mobile phone, silver coins and cash of Rs.49,700/-, that in all Rs.55,000/-. The learned advocate for the petitioner confined his arguments on the ground that the alleged offences registered against the detenu cannot be said the cause of disturbing the public order or public health or in any circumstances prejudicial and have potential to disturb the even tempo of public life and/or public health. According to him, no relevant materials did exist before the detaining authority while passing the order of detention and the subjective satisfaction arrived at by the detaining authority therefore vitiated and order of detention

dated 25.8.2005 suffers from vive of non-application of mind, and therefore, required to be quashed and set aside.

4. The learned advocate for the petitioner has relied upon the judgment of the Apex Court in the case of Darpan Kumar Sharma alias Dharban Kumar Sharma Vs State of Tamil Nadu and others reported in AIR 2003 SC 971 and Division Bench judgment of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and others reported in 2000(1) GLH 393 and also another Division Bench judgment of this Court in LPA No.223 of 2000 in SCA 554 of 2000 dated 22.8.2000 in the matter of Ashok Balabhai Makwana Vs. State of Gujarat decided by this Court (Coram: M.R.Calla & R.R.Tripathi, JJ.).

5. On behalf of respondents, Mr.Poojari, learned AGP appears and has tried to support the order of detention on the grounds stated therein. He has not filed affidavit in this behalf.

6. Having heard the learned counsel for the parties and perused the record, in my considered view, the

detaining authority has passed the order of detention without there being any credible or cogent material about the detenu. On careful perusal of the grounds of detention order and considering the facts emerging from the record of the case, the facts of this case is covered by the judgment of Apex Court in the case of Darpan Kumar Sharma (Supra), Division Bench judgment of this Court in the case of of Ashokbhai Jivraj (supra) and in the case of Ashok Balabhai Makwana (supra), therefore the order of detention passed by the detaining authority cannot be sustained and deserves to be quashed and set aside.

7. For the foregoing reasons, the petition is allowed. The impugned order dated 25.8.2005 passed by the respondent No.1 authority is quashed and set aside. The detenu-Bhimbahadur @ Raju Kishanbahadur Thapa (Gurkha) is ordered to be set at liberty forthwith unless required in any other case. Rule is made absolute. Direct service is permitted.

( K.M. Mehta, J. )

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